

## REMARKS

Claims 18-34 are pending. Claims 21, 22, 27, and 29 are amended with this response. These amendments are supported throughout the specification – in particular at par. [0020].

### I. Anticipation Rejections

Claims 18-20 and 23-25 stand rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Pat. No. 6,134,531, to Trewitt et al. These rejections are respectfully traversed, for the following reasons.

#### A. Trewitt fails to teach the limitations of claims 18-20 and 23-25

Trewitt does not teach the limitations of the present claims.

Claim 18, for example, requires:

A computer system for gathering data to be used in scripting, directing, writing, or producing a show, comprising:

means for sending an electronic query to a member of a test audience, wherein said query elicits an electronic feedback message;

means for receiving said feedback message; and

means for electronically transmitting data comprising said feedback message, wherein said data is electronically analyzed and utilized in development of said show.

The underlined language shows some of the limitations of claim 18 ignored by the Office Action and absent from Trewitt.

For example, the description in Trewitt is clearly directed to *real-time* interaction with a *broadcast* program. In contrast, claim 18 is limited to a *test* audience – that is, an audience viewing a program that has *not yet been broadcast*.

Likewise, Trewitt is directed to a program being broadcast – that is, a program that already has been developed. So Trewitt's description is completely unrelated to a test audience providing feedback to be used in *development* of a show, as required by claim 18.

For at least the above reasons, Trewitt cannot anticipate claim 18. Trewitt is directed to a completely different problem (ascertaining audience reaction to a show being broadcast) than that to which claim 18 is directed.

Of course, Trewitt also cannot anticipate dependent claims 19, 20, and 23-25 because Trewitt does not anticipate claim 18, from which those claims depend.

Moreover, Trewitt does not teach “a television or online series of situational comedies, episodic shows, or soap operas.” The Office Action states that Trewitt teaches “a television show,” but ignores the clear limitation of claim 19 to a television or online *series* of situational comedies, *episodic shows*, or *soap operas*. These limitations are neither taught nor suggested by Trewitt.

Thus, the 102(a) rejections of claims 18-20 and 23-25 over Trewitt are unsupported. Reconsideration and withdrawal of those rejections is respectfully requested.

#### **B. Grounds for 102(a) rejections are unclear**

The Patent Office has not provided any reason for asserting that Trewitt qualifies as prior art under 35 U.S.C. § 102(a). The present application has a priority date of December 30, 1999. Trewitt issued on October 17, 2000. Thus, Trewitt is not a patent or printed publication “before the invention thereof by the applicant for patent.” Clarification of the ground for rejecting the present claims over Trewitt under 35 U.S.C. § 102(a) is respectfully requested.

### **II. Unpatentability Rejections**

Claims 21-22, 26, and 28-34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Trewitt. These rejections also are respectfully traversed, for the following reasons.

#### **A. Trewitt fails to teach the alleged limitations, and the claims are mischaracterized**

Regarding claims 21 and 22, the Office Action contains several errors. First, the Office Action asserts that “Trewitt teaches structuring the responses to the user’s input into said story.” This both mischaracterizes claim 21 and ignores the claim as a whole.

Claim 21 is mischaracterized in that it requires the *queries* to be structured – not the “responses” – especially not “responses to the user’s input.” Moreover, claim 21 relates to user responses to queries, not responses to user input – a completely different concept.

Also, claim 21 depends from claim 18, and rewritten in independent form (to make all limitations explicit) reads as follows:

A computer system for gathering data to be used in scripting, directing, writing, or producing a show, comprising:  
means for sending an electronic query to a member of a test audience, wherein said query elicits an electronic feedback message;  
means for receiving said feedback message; and  
means for electronically transmitting data comprising said feedback message, wherein said data is electronically analyzed and utilized in development of said show, and  
wherein said query is part of a plurality of queries structured in a multi-tiered manner based on when a tier of questions and responses can be incorporated into said show.

Thus, the “query” in claim 21 is a query sent to a member of a *test audience* – a limitation neither taught nor suggested by Trewitt’s system. Therefore, Trewitt does not teach the query of claim 21.

For analogous reasons, Trewitt fails to teach the limitations of claims 22 and 26.

**B. The Office Action improperly takes “Official Notice” of every claim limitation absent from Trewitt**

Generally, the Office Action improperly tries to use “Official Notice” to reject all pending claims that the Patent Office admits have limitations absent from Trewitt. All such takings of Official Notice are improper, unsupported, and should be withdrawn.

**(1) Applicant respectfully demands documentary evidence**

Pursuant to MPEP § 2144.03(C), Applicant hereby traverses each such taking of official notice and respectfully demands (pursuant to the *Chevenard* decision) that the Patent Office provide supporting documentary evidence, in the next office action, for each taking of official notice, if the corresponding rejections are to be maintained.

**(2) The Office Action fails to comply with MPEP § 2144.03**

Applicants respectfully note the following rules from MPEP § 2144.03:

Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are *capable of instant and unquestionable demonstration as being well-known*.

[A]ssertions of . . . specific knowledge in the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.

[A]n assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support.

### **(3) The Patent Office's takings of Official Notice are not well-reasoned**

Moreover, the takings of Official Notice in the Office Action are not well-reasoned, as required by § 2144.03. Regarding the claim 21 limitation of “said query is part of a plurality of queries structured in a multi-tiered manner based on when a tier of questions and responses can be incorporated into said show,” the Office Action says that limitation is “old and well known” because “based on the stage of when a new product or service, will be marketed different level of information is needed for the customers in order to fully develop the product/services.” Applicants are unsure of the meaning of the quoted language, and clarification is respectfully requested.

In any event, marketing goods or services has no apparent connection with a multi-tiered plurality of queries whose responses are to be incorporated into a television (or other) show to be produced in the future, as required by claim 21, or with the “additional tier of such queries that can be immediately incorporated into a television show production” required by claim 22. Thus, the “sound technical and scientific reasoning” required by MPEP § 2144.03 is not present in the rejections of claim 21 and 22.

Similarly, claims 28-33 are rejected on the taking of Official Notice that:

[I]t is old and well known in TV shows to place commercials promoting responses to shows, educating the audience of the upcoming shows in order to promote the upcoming events. For example, previews of upcoming shows promote audience participation and viewership of the show, as well as educate and promote the show and shows the viewers mini-

portions of the upcoming shows, the viewers feedback is measure by the viewership of the show.

Based solely on the above statement which, as best understood, states only that commercials showing previews of upcoming shows were known, the Patent Office concludes that prequel-mercials (described in the specification of the present application as “a convergence of advertising, storytelling, and interactivity”) comprised in a query sent to a member of a test audience and eliciting a feedback message used in development of a show, as required by claims 28-33, is “obvious.” Again, this conclusion by the Patent Office fails to satisfy MPEP § 2144.03: the conclusion is not based on “sound technical and scientific reasoning,” but rather is completely unsupported (there is no apparent connection between commercials advertising future shows and the prequel-mercials of claims 28-33), and should be reconsidered and withdrawn.

The rejection of claim 34 focuses solely on the “product placement advertisement” limitation of that claim, and ignores the fact that claim 34 depends from claim 33, which depends from claim 28, which depends from claim 18. The “product placement advertisement” limitation of claim 34 must be read in the context of the entire claim, including all claims incorporated therein. In that context, which requires the “product placement advertisement” to be comprised in the prequel-mercials of claim 33 and claim 28, and to be within the storyline of claim 33, which is supportive of the show of claims 28 and 18, the fact that “product placement advertisement” alone may have been known has little relevance. When claim 34 is considered as a whole, as it must be, there is no support for its rejection – the required limitations are neither taught by Trewhitt nor are “old and well known”, and that rejection should be reconsidered and withdrawn.

Finally, the rejection of claim 26 depends on the rejection of claim 18, which has been explained above to have been in error.

In light of the above, all claim rejections have been successfully traversed. Applicant therefore respectfully requests that all of those rejections be reconsidered and withdrawn.

No fee is believed due in connection with this Response (other than the extension fee authorized above). If any other fee is required, please charge such fee to Deposit Account No. 50-0310.

Respectfully submitted,

Date: March 7, 2008

A handwritten signature in black ink, reading "Steven D. Underwood", is positioned above a horizontal line.

Steven D. Underwood, Esq.

Registration No. 47,205

MORGAN, LEWIS & BOCKIUS LLP

**Customer No. 09629**

(212) 309-6196